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September 14, 2021

TO: Members of the Council on Elementary and Secondary Education

FROM: Amy Beretta, Appeals Committee Chair

RE: Approval of Appeals Committee Recommendation –
DCYF v. Providence Public School District

The Appeals Committee of the Council on Elementary and Secondary Education met on August 17, 2021, to hear oral argument on the appeal of the following matter:

DCYF v. Providence Public School District

RECOMMENDATION: THAT, in the matter of DCYF vs. Providence Public School District, the Commissioner's decision is upheld, as presented.

STATE OF RHODE ISLAND

COUNCIL ON ELEMENTARY
AND SECONDARY EDUCATION

DEPARTMENT OF CHILDREN, YOUTH)
AND FAMILIES,)
Petitioner,)
v.)
PROVIDENCE PUBLIC SCHOOL)
DEPARTMENT,)
Respondent.)
In re: C. Doe)

DECISION

Petitioner Department of Children, Youth and Families (“DCYF”) has appealed from the March 8, 2021, decision of the Commissioner, wherein the Commissioner denied and dismissed the DCYF’s request that the Providence Public School Department (“Providence”) be designated the Local Education Agency (“LEA”) financially and otherwise responsible for C. Doe for the period of his residential placement at the Harmony Hill School (“Harmony Hill”). In that decision, the Commissioner held that DCYF failed to establish (1) that *R.I. Gen. Laws § 16-64-1.1(c)* was applicable, or alternatively, (2) that Doe’s parents’ “last known residence” was in Providence, or (3) that DCYF had made reasonable efforts to determine the location of said residence. For the reasons stated herein, we affirm the Commissioner’s decision.

The facts underlying this appeal are contained in the Commissioner’s written decision dated March 18, 2021 (RIDE No. 18-108K) (the “Decision”) as follows. On December 30, 2013, Doe was placed into the care of DCYF, and on April 29, 2014, Doe’s adoptive parents signed an agreement voluntarily terminating their parental rights. *Decision at 5.* On March 31, 2016, the

Family Court vacated Doe's adoption, and while affirming the termination of Doe's biological father's rights, restored the parental rights of Doe's biological mother. *Id.* At that time, Doe's biological mother resided in Providence. *Id.*

From February 26, 2016 through March 2, 2018, Doe resided with his mother in an apartment located at 64 Waverly Street, Providence. *Decision at 5-6.* On April 21, 2018, after Doe had been charged with First Degree Robbery, Doe was placed at the Rhode Island Training School in Cranston. *Decision at 6.* On June 11, 2018, Doe was placed at Harmony Hill. *Id.* DCYF does not appear to have had any contact with Doe's mother after Doe's placement at Harmony Hill, and there was testimony that Doe's mother at some point moved out of the Waverly Street apartment. *Decision at 6-7.* At all relevant times, Doe was not eligible for special education services, and did not receive special education services. *Decision at 6.*

Before the Commissioner, DCYF attempted to show that Doe's mother's "last known residence" was in Providence as of the date Doe was placed at Harmony Hill, (June 11, 2018) and while Doe was at Harmony Hill. We agree with the Commissioner that Petitioner DCYF has failed to support this claim. The statutes DCYF relies upon, *R.I. Gen. Laws §16-64-1.1 (c)* and *§16-64-1.2*, as the Commissioner points out, do not apply by their plain language, as there was no evidence the mother (whose parental rights remained intact) moved out-of-state, nor was Doe "surrendered for adoption" or "freed for adoption by a court of competent jurisdiction." *Decision at 11.* Similarly, we also agree upon review of the record that, as the Commissioner observed, "[T]here is no evidence that DCYF made *any* effort to ascertain Doe's mother's whereabouts after Doe was placed at Harmony Hill." *Decision at 13.* Further, DCYF was unable to produce anyone with actual knowledge of the parents' whereabouts and instead relied exclusively upon "stale" Rhode Island Children's Information System records. *Id.* Finally, to the extent DCYF raises the issue of a free

appropriate public education (“FAPE”) being denied should we agree with the Commissioner’s decision as to the level of proof required on the issue of parental residency, we note that Doe, at all relevant times, was not eligible for special education services and did not receive special education services. As such, DCYF’s argument, in this specific case involving Doe that is before us, has no basis. Further, as the Commissioner observed, DCYF remains responsible for providing eligible children with a FAPE in the absence of evidence sufficient to identify a responsible LEA. *Decision at 13 (citation omitted).*

The Council reviewed the briefs and considered the well-presented arguments of both parties at oral argument. The Commissioner’s findings of fact were supported by evidence on the record, and we concur with the Commissioner’s decision that Petitioner DCYF has failed to establish that Respondent Providence is financially responsible for C. Doe who was placed in a residential treatment facility (Harmony Hill) that provided educational services. We find that the Commissioner’s decision is in no way “patently arbitrary, discriminatory, or unfair” which is the standard of review for Appeals to the Council. *Altman v. School Committee of the Town of Scituate*, 115 R.I. 399, 405 (1975). Finally, we would be remiss if we did not point out, as we have in the past, that DCYF might be able to avoid situations such as here, which involved three evidentiary hearings with the Commissioner, briefs filed with the Commissioner, a brief filed with the Council, and a hearing before the Appeals Committee, if DCYF had in the first instance requested the Family Court to make a residency determination at the time Doe was placed in state custody.

For the reasons stated herein, the Decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on August 17, 2021.

Council on Elementary and Secondary Education,

Barbara Cottam, Chair

_____, 2021

Amy Beretta, Esq., Appeals Committee Chair

_____, 2021